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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

Review of the Pioneer's
Preference Rules

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ET Docket No. 93-266

GTE COMMENTS

GTE Service Corporation and
its affiliated domestic
telephone operating companies

Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-6362

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5214

November 15, 1993

Their Attorneys

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SUMMARY

1. Inasmuch as competitive bidding has eliminated the basis for awarding pioneer's preferences, GTE suggests that the Commission should not only stop accepting pioneer's preference applications indefinitely; it should now determine that there will be no additional final awards of pioneer preferences.

2. Because the capital markets will take account of the value of the innovations, a decision to make no additional grants of final pioneer's preferences would not be unfair.

3. Should the Commission after 1998 revert to a lottery assignment methodology for specific radio services, consideration might then be given to some form of pioneer recognition.

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GTE Service Corporation, on behalf of its domestic telephone, equipment and service companies ("GTE"), responds to the FCC's Notice of Proposed Rule Making, FCC 93-477 (released October 21, 1993) (the "Notice" or "NPRM").

The Notice (at paragraph 1) initiates a review of the pioneer's preference rules to consider whether, under newly enacted authority to assign licenses by competitive bidding, "the original basis and purpose of the rules continues to support the need for these rules."

DISCUSSION

1. **Inasmuch as competitive bidding has eliminated the basis for awarding pioneer's preferences, the Commission should (I) discontinue accepting pioneer's preference applications indefinitely; and (II) make no additional final awards of pioneer's preferences.**

The Notice (at paragraph 7) observes that the establishment of competitive bidding authority by Congress¹ creates a "new dynamic for the assignment of licenses."² "One may conclude," the Notice says (*id.*), "that under this new scheme the

¹ See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002, 107 Stat. 387, enacted August 10, 1993; Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP Docket No. 93-253, Notice of Proposed Rulemaking, FCC 93-455 (released October 12, 1993).

² Footnote omitted.

value of innovation may be considered in the marketplace and measured by the ability to raise the funds necessary to obtain the desired license(s). Thus, we are concerned that competitive bidding authority may have undermined the basis for our pioneer's preference rules."³

In GTE's view, these concerns are fully justified. Indeed, the logic that once supported the grant of pioneer's preferences has been removed by the new environment. Further, granting pioneer's preferences hereafter would be at odds with the governing logic of competitive bidding.

The Commission is now authorized to implement a competitive bidding methodology for assigning licenses when mutually exclusive applications are requested for commercial radio services that meet certain requirements. Under this process, any party that meets the qualifications for holding a radio license will be eligible to participate in the bidding. The licenses would be awarded to the party that places the highest value on the spectrum. With the random chance element removed from the assignment process, one of the major "barriers" that the pioneer's preference policy was supposed to surmount has been eliminated. When the basis for a rule changes, the rule should be re-examined. When there is no longer any logical support for the rule as it stands, it should be changed or repealed.⁴

It would be very much in the interests of the investment community to make use of -- and thus recognize -- the reputation and qualifications of an individual or corporate leader in relevant technology. As expected by Congress, the capital markets will make funds available to allow the best qualified party to prevail in the competitive bidding process. In this way the "true" pioneers will have the opportunity to participate in the

³ Footnote omitted.

⁴ See the Notice at n.5.

offering of the services without the cumbersome and inevitably arbitrary process for governmental selection for pioneer's preferences. The value of innovation will indeed be "considered in the marketplace and measured by the ability to raise the funds necessary to obtain the desired license(s)." *Id.*

It comports with the functioning of capital markets in our economic system that the financial marketplace play a pivotal role in recognition of an innovative party. This process will conserve the resources of the Commission, the industry and the innovative party. There is no reason to believe investment bankers and venture capitalist are not the best qualified to evaluate the financial potential of innovations.

There will be a "leg-up" for innovators. When the Commission allocates spectrum for a new radio service, the Order establishing rules for the new service will contain a discussion of substantial matters regarding the nature of the service and the technical rules governing the service. Investors will be able to determine -- perhaps even from the words of the FCC's decision -- what relationship exists between rule changes adopted and the proposals made by various parties. The market would seek to make use of the qualifications of technology leaders. This will be further influenced by any applications for patents or copyrights.

Under competitive bidding, financial backing should materialize for truly innovative parties. There will be no need for governmental intrusion into the process, since -- as expected by Congress -- the workings of the capital markets will award victories where appropriate.

Accordingly: GTE suggests that the Commission should not only stop accepting pioneer's preference applications indefinitely; it should now determine that there will be no additional final awards of pioneer preferences.

2. **A decision to make no additional grants of final pioneer preferences would not be unfair, because the capital markets will take account of the value of the innovations.**

Commissioner Barrett has expressed concern about fairness to parties granted tentative preferences in the broadband PCS proceeding. GTE suggests that the true worth of the innovations in question will be recognized by the capital markets as they address the competitive bidding process.⁵ Under a competitive bidding methodology, a preference conferred on one service provider effectively assigns a license at no cost,⁶ while competing service providers would have to pay significant sums of money. Establishing a new service containing such an unequal cost structure among its providers would surely disrupt competition and be grossly unfair. With the changes brought about by the Omnibus Budget Reconciliation Act, the Commission must examine the future market impact of all interrelated policies on the assignment process. In this case, the greater public interest rests in establishing competitive services by not awarding a "no cost" license to one or more service providers.

3. **Should the Commission revert to a lottery assignment methodology after 1998 for specific radio services, some form of pioneer's recognition might then be considered.**

Competitive bidding has cured the defect that prompted the need for a pioneer's preference. The Omnibus Budget Reconciliation Act sets certain limits on the Commission's ability to use competitive bidding to assign radio licenses. Currently, the

⁵ In all likelihood, the same parties to whom tentative preferences have been awarded (PCS, APC, Cox, Omnipoint and Suite 12) will occupy a leading edge position in personal communications in any event, and this will be translated into available capital.

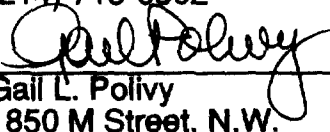
⁶ As the Commission states in the Notice at paragraph 10: "[W]e believe that the statutory language, combined with our pioneer's preference regulatory scheme as it currently exists, exempts pioneer's preference licensees from payment for a license so issued."

authority to use competitive bidding expires September 30, 1998 barring further Congressional action. Should competitive bidding be replaced by a form of chance assignment, the Commission might then consider some form of pioneer recognition. This decision should be made if and when the circumstances arise.

Respectfully submitted,

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its affiliated domestic
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